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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 ACTIVISION PUBLISHING, INC., a
12 Delaware corporation,

13 Plaintiff,

14 v.

15 JOHN TAM, an individual, JAMIE
16 YANG, an individual, COREY FONG,
17 an individual, DOUG KENNEDY, an
18 individual, HONG LIP YOW, an
19 individual, RAYMOND YOW, an
20 individual, REVERB
21 COMMUNICATIONS, INC., a
22 California corporation, and THE ANT
23 COMMANDOS, INC., a California
24 corporation,

25 Defendants.
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27
28

Case No. C-07-3536 MEJ

**[PROPOSED] CONSENT
JUDGMENT AND PERMANENT
INJUNCTION AS TO
DEFENDANTS DOUG
KENNEDY AND REVERB
COMMUNICATIONS, INC.**

1 WHEREAS plaintiff Activision Publishing, Inc. (“Activision”) and
2 defendants Doug Kennedy (“Kennedy”) and Reverb Communications, Inc.
3 (“Reverb”) (collectively “Defendants”) have agreed in a separate confidential
4 agreement to settlement of the matters in issue between them and to entry of this
5 Consent Judgment and Permanent Injunction, it is hereby ORDERED,
6 ADJUDGED, AND DECREED THAT:

7 1. Activision alleged claims against Doug Kennedy and Reverb
8 Communications, Inc. for: (1) copyright infringement under 17 U.S.C. § 501, *et*
9 *seq.*; (2) violation of Section 43(a) of the Lanham Act under 15 U.S.C. § 1125(a);
10 (3) violation of the Computer Fraud and Abuse Act pursuant to 18 U.S.C. §§
11 1030(a)(4) and (a)(5)(B); (4) violation of California Penal Code § 502; (5)
12 misappropriation of trade secrets under California Civil Code §§ 3426, *et seq.*; (6)
13 misappropriation of confidential information; (7) intentional interference with
14 contractual relations; (8) interference with prospective economic advantage; (9)
15 California statutory unfair competition under California Business and Professions
16 Code § 17200, *et seq.*; and (10) common law unfair competition.

17 2. This Court has jurisdiction over all of the parties in this action and
18 over the subject matter in issue based on 28 U.S.C. §§1331, 1338(a) and 1367(a), as
19 well as 15 U.S.C. § 1121(a) and 18 U.S.C. § 1030(g). This Court further has
20 continuing jurisdiction to enforce the terms and provisions of this Consent
21 Judgment and Permanent Injunction. Venue is also proper in this Court pursuant to
22 28 U.S.C. §§1391(b).

23 3. Plaintiff Activision is a Delaware corporation, having its principal
24 place of business at 3100 Ocean Park Boulevard, Santa Monica, California 90405.

25 4. Defendant Reverb is a California corporation, having its principal
26 place of business at 18711 Tiffeni Drive, Suite K, Twain Harte, California 95383. .

27 5. Defendant Kennedy, an individual, is Vice President of defendant
28 Reverb and resides in Twain Harte.

1 6. Activision is the owner of the copyright in the audiovisual material
2 associated with the Guitar Hero™ franchise, which has been registered in the
3 United States. Copyright Registration PA-1-322-764 for the audiovisual content of
4 Guitar Hero™ is valid and enforceable throughout the United States.

5 7. Valid contracts exist between Activision and the Jamie Yang, Corey
6 Fong and John Tam (the “Former Employees”), which expressly obligate them to
7 maintain the confidentiality of Activision’s trade secrets and confidential
8 information, and to not use such information in competition with Activision. Valid
9 employment contracts existed between Activision and both Jamie Yang and John
10 Tam, which expressly obligated them to remain employed with Activision through
11 at least May 31, 2007.

12 8. Activision Proprietary Information¹ includes, but is not limited to, the
13 following confidential and trade secret information, which derives independent
14 economic value from not being generally known to the public or to other persons
15 who can obtain economic value from its disclosure or use:

16
17 ¹ Activision Proprietary Information includes, but is not limited to, any and
18 all trade secrets, confidential knowledge, data or any other proprietary information
19 pertaining to any business of the Company or any of its clients, customers or
20 consultants, licensees or affiliates. By way of illustration but not limitation,
21 Activision Proprietary Information includes (a) inventions, ideas, improvements,
22 discoveries, trade secrets, processes, data, programs, knowledge, know-how,
23 designs, techniques, formulas, test data, computer code, other works of authorship
24 and designs whether or not patentable, copyrightable, or otherwise protected by
25 law, and whether or not conceived of or prepared by me, either alone or jointly with
26 others; (b) information regarding research, development, new products and
27 services, marketing plans and strategies, merchandising and selling, business plans,
28 strategies, forecasts, projections, profits, investments, operations, financings,
records, budgets and unpublished financial statements, licenses, prices and costs,
suppliers and customers; and (c) identity, requirements, preferences, practices and
methods of doing business of specific parties with whom the Company transacts
business, and information regarding the skills and compensation of other employees
of the Company and independent contractors performing services for the Company.

1 (a) Financial information related to the Guitar Hero™ franchise, including
2 but not limited to, profit and loss information, cost information, expenses,
3 contract terms, sales numbers and forecasts, information contained in the
4 Guitar Hero II™ Budget Summary, information contained in the Guitar Hero
5 II™ North American Xbox 360™ Strategy PowerPoint, information
6 contained in the Variable Sales & Marketing spreadsheet,

7 (b) Marketing information related to the Guitar Hero™ franchise,
8 including but not limited to marketing partners, contract terms, marketing
9 categories, information contained in the Guitar Hero™ franchise plans, and
10 identified growth areas for the Guitar Hero™ franchise,

11 (c) Product information related to the Guitar Hero™ franchise, including
12 but not limited to product design, such as the design for the Guitar Hero II™
13 Xbox 360™ controller design, future product ideas and designs,

14 (d) Profit and loss statements developed by the Former Employees which
15 were derived from Guitar Hero™ financial information, including such
16 statements developed for Hourglass Interactive and/or Lodestone
17 Entertainment,

18 (e) Information related to music licensing and in game advertising for the
19 Guitar Hero™ franchise, including but not limited to contract terms,
20 identities of possible future songs and artists to include, and identities of
21 partners for licensing or in game advertising, and

22 (f) Vendor information related to the Guitar Hero™ franchise, including
23 but not limited to vendor identities and contact lists, vendor pricing, and
24 vendor contract terms.

25
26 9. Based upon the stipulation of the parties, it is hereby further
27 ORDERED, ADJUDGED AND DECREED THAT:
28

- 1 A. Kennedy and Reverb shall pay Activision damages in the amount of two
2 hundred fifty thousand dollars (\$250,000). This obligation is joint and
3 several.
- 4 B. Kennedy and Reverb, their, officers, directors, agents, servants, employees,
5 attorneys, and those in active concert or participation with any of them who
6 receive actual notice of this injunction by personal service or otherwise ARE
7 RESTRAINED AND ENJOINED from:
- 8 1. Copying, distributing, displaying or using any content derived or
9 copied from the Guitar Hero™ or Guitar Hero II™ video game;
 - 10 2. Copying, distributing, displaying or using the game demo created by
11 John Tam based on Guitar Hero™ and StepMania, screenshots of
12 which are attached hereto as **Exhibit 1** (the “Tam Demo”) and/or
13 copying, distributing, displaying or using any content derived or copied
14 therefrom;
 - 15 3. Manufacturing, selling, offering for sale, advertising or distributing the
16 Tam Demo, or any rhythm based video game including or derived from
17 any Activision Proprietary Information;
 - 18 4. Taking any steps to develop, market, manufacture, sell or distribute
19 any guitar or drum based video game, with the exception of any video
20 game that, through documentary evidence, is shown to have been
21 independently developed without the developmental involvement of
22 John Tam, Corey Fong, Jamie Yang, Reverb Communications and/or
23 Doug Kennedy;
 - 24 5. Using, disclosing, transferring, distributing or reproducing any
25 Activision Proprietary Information and any materials or information
26 derived therefrom, including but not limited to, using it in connection
27 with developing a music or rhythm based game, or in starting a
28

1 company, said Activision Proprietary Information including but not
2 limited to:

- 3 • Financial information related to the Guitar Hero™ franchise,
4 including but not limited to, profit and loss information, cost
5 information, expenses, contract terms, sales numbers and forecasts,
6 information contained in the Guitar Hero II™ Budget Summary,
7 information contained in the Guitar Hero II™ North American
8 Xbox 360™ Strategy PowerPoint, information contained in the
9 Variable Sales & Marketing spreadsheet,
- 10 • Marketing information related to the Guitar Hero™ franchise,
11 including but not limited to marketing partners, contract terms,
12 marketing categories, information contained in the Guitar Hero™
13 franchise plans, and identified growth areas for the Guitar Hero™
14 franchise,
- 15 • Product information related to the Guitar Hero™ franchise,
16 including but not limited to product design, such as the design for
17 the Guitar Hero II™ Xbox 360™ controller design, future product
18 ideas and designs,
- 19 • Profit and loss statements developed by the Former Employees
20 which were derived from Guitar Hero™ financial information,
21 including such statements developed for Hourglass Interactive
22 and/or Lodestone Entertainment,
- 23 • Information related to music licensing and in game advertising for
24 the Guitar Hero™ franchise, including but not limited to contract
25 terms, identities of possible future songs and artists to include, and
26 • Vendor information related to the Guitar Hero™ franchise,
27 including but not limited to vendor identities and contact lists,
28 vendor pricing, and vendor contract terms;

6. Disclosing, transferring, distributing, reproducing or using any of the business plans developed by the Former Employees or otherwise derived from those individuals for The Ant Commandos or for the business venture referred to variously as Hourglass Interactive and Lodestone Entertainment;
7. Soliciting Activision employees for a period of one year;
8. Taking any steps to develop, market, manufacture, sell or distribute any of the confidential peripheral devices disclosed in Confidential Appendix A to the confidential Settlement Agreement until six months after Activision commercially releases such a device;
9. Soliciting any of the Activision partners and growth areas identified in Confidential Appendix B to the confidential Settlement Agreement, except as qualified therein, for a period of one (1) year;
10. Soliciting any of the manufacturing vendors identified in Confidential Appendix C to the confidential Settlement Agreement for a period of one (1) year; and
11. As to Defendant Kennedy only, working in an individual or any other capacity in connection with the videogame entitled Rock Band or any sequels, versions, or extensions thereof until January 1, 2008.

- C. Defendants shall, within five (5) days of entry of this Consent Judgment and Permanent Injunction, deliver the documents and things listed below in their possession, custody or control and shall file a written certification with the Court stating that they have done so and have not retained any such documents and things or any copies, electronic or otherwise, of such things:
1. All Activision property, including but not limited to documents, files, materials and things containing or derived from Activision Proprietary Information and/or that Defendants acquired, received,

1 and/or developed from or with the Former Employees having
2 anything to do with the video game business; and

- 3 2. All documents, files, materials and things related to the business
4 venture Hourglass Interactive and/or Lodestone Entertainment and/or
5 otherwise related to any communications with or involving the
6 Former Employees, Hong Lip Yow, Raymond Yow, The Ant
7 Commandos, Inc. and/or any third party with whom you
8 communicated related to the business venture Hourglass Interactive
9 and/or Lodestone Entertainment.

10 D. Service by mail upon the counsel of record of a copy of this Consent
11 Judgment and Permanent Injunction entered by the Court is deemed
12 sufficient notice to Defendants under Rule 65(d) of the Federal Rules of Civil
13 Procedure. It shall not be necessary for any Defendant to sign any form of
14 acknowledgement of service.

15 E. Except as otherwise provided for in the Settlement Agreement, the parties
16 shall bear their own attorneys' fees and costs.

17
18 **IT IS SO ORDERED.**

19
20 Dated: August __, 2007

By: _____
Hon. Maria Elena James
United States District Court Magistrate Judge

1 APPROVED AS TO FORM AND CONTENT:

2 Dated: August __, 2007 JONES DAY

3
4 By: _____
5 Michael A. Tomasulo

6 Attorneys for Plaintiff
7 ACTIVISION PUBLISHING, INC.

8 Dated: September 4, 2007 SWEENEY, MASON, WILSON &
9 BOSOMWORTH

10 By: _____
11 Kurt E. Wilson
12 Trevor J. Zink

13 Attorneys for Defendants
14 DOUG KENNEDY AND REVERB
15 COMMUNICATIONS, INC.
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1 APPROVED AS TO FORM AND CONTENT:

2 Dated: September 11, 2007

JONES DAY

3
4 By: 

5 Michael A. Tomasulo

6 Attorneys for Plaintiff
7 ACTIVISION PUBLISHING, INC.

8 Dated: August __, 2007

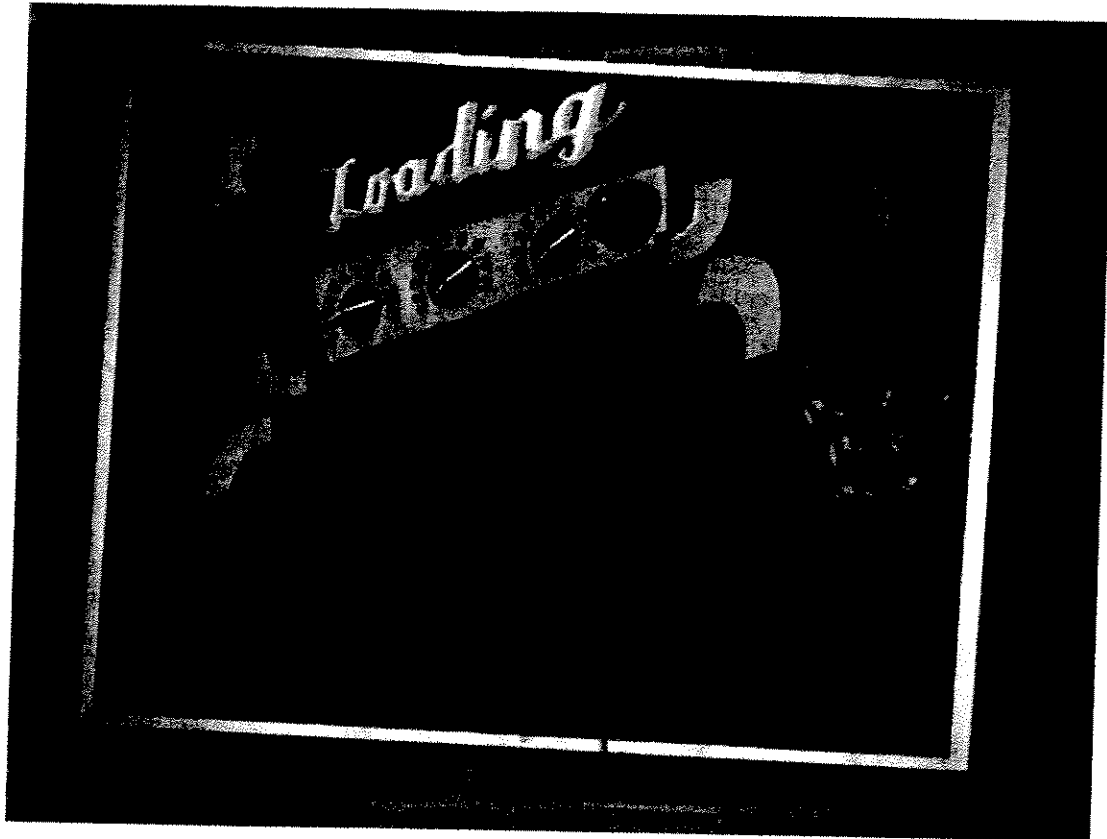
SWEENEY, MASON, WILSON &
9 BOSOMWORTH

10 By: _____

11 Kurt E. Wilson

12 Attorneys for Defendants
13 DOUG KENNEDY AND REVERB
14 COMMUNICATIONS, INC.

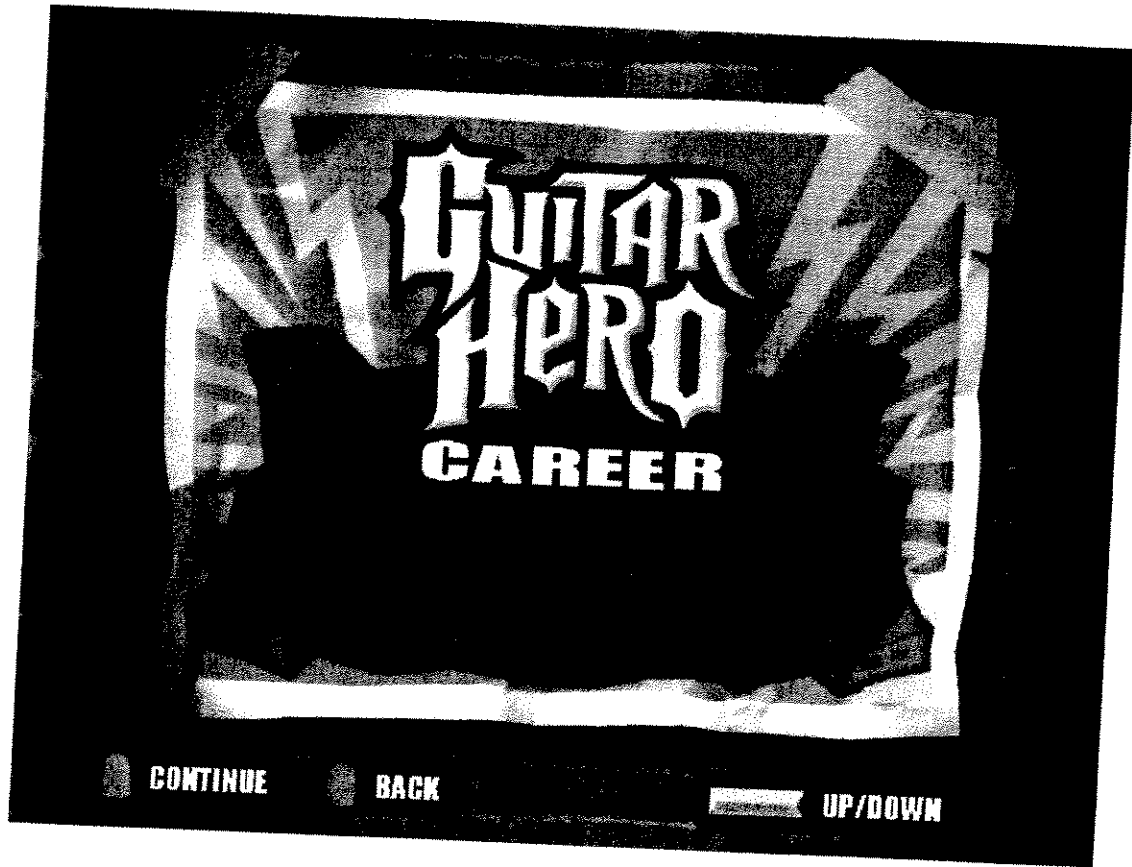
EXHIBIT 1



Screen Shot from
Tam Demo



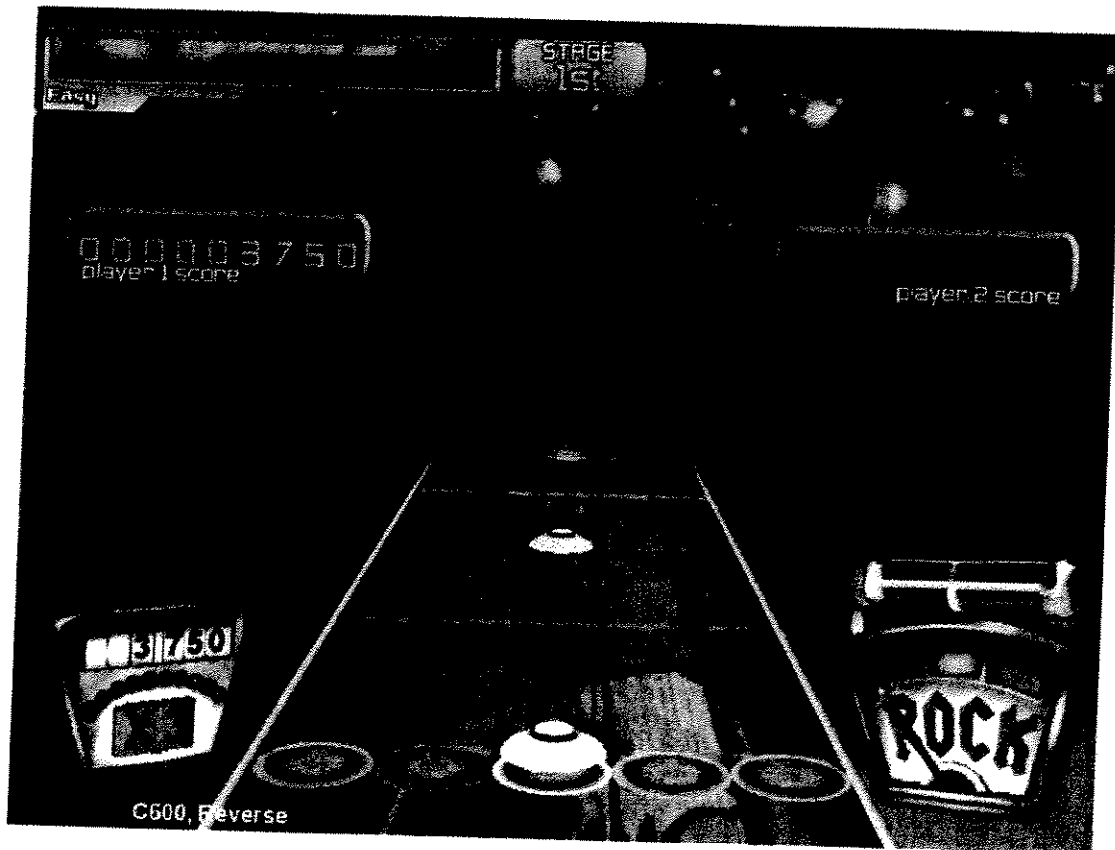
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Tam Demo



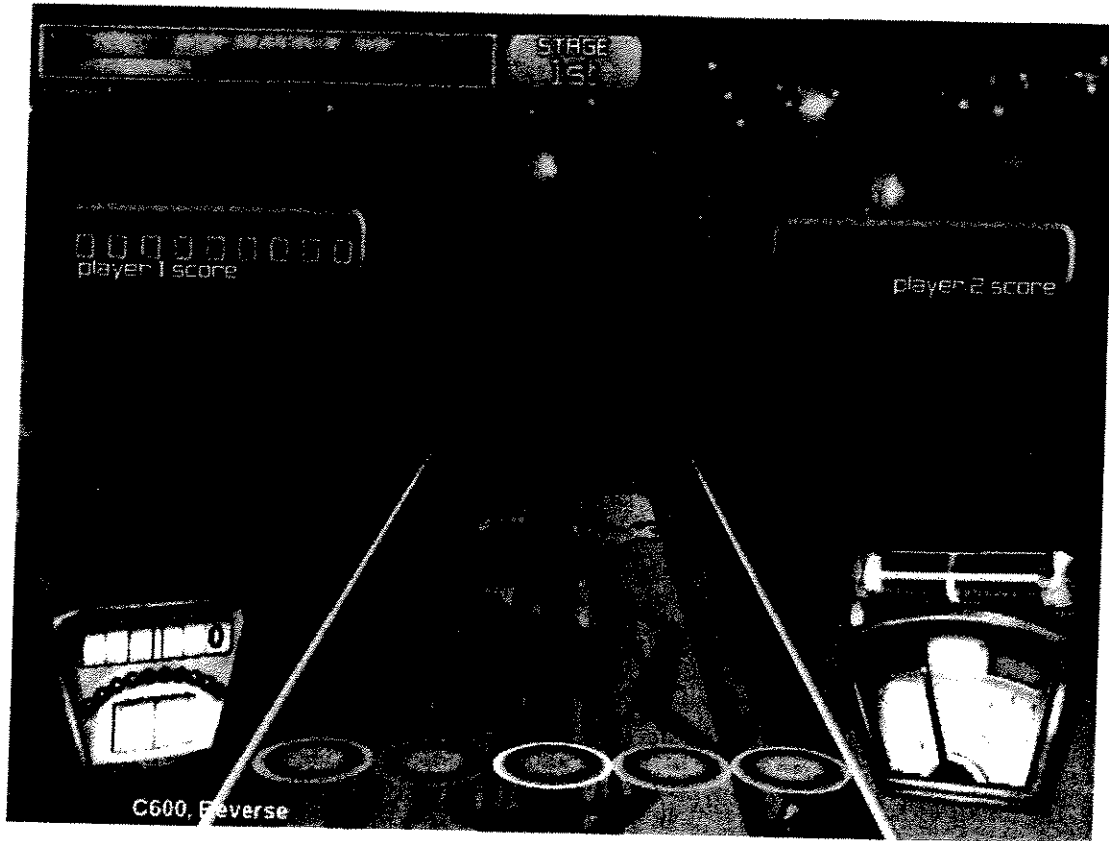
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Tam Demo



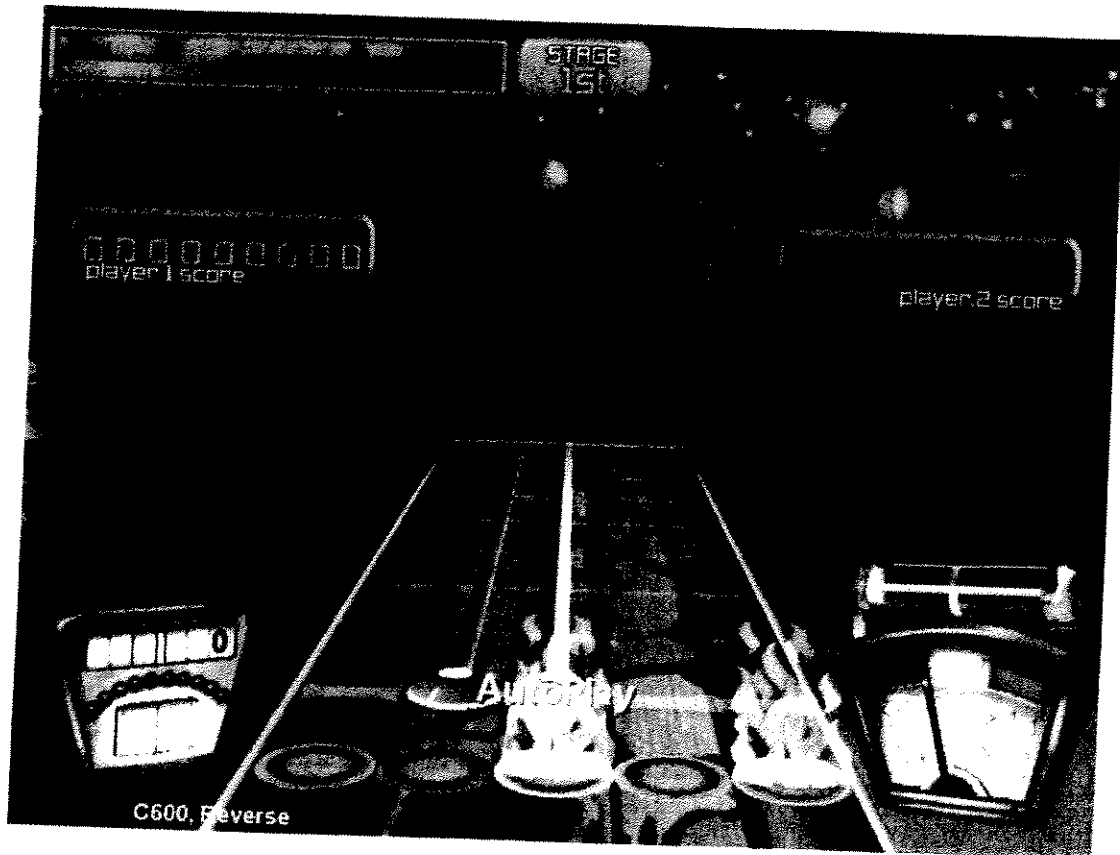
Screen Shot from
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